

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLONDINE PAUL,

Plaintiff,

-against-

MICHAEL CAPRA, Superintendent of Sing
Sing Correctional Facility; LIEUTENANT
WILLIAMS, of Sing Sing Correctional Facility;
INVESTIGATOR “ISAAC,” from the Office of
Special Investigations, of the NYSDOCCS;
“JOHN DOE”; “JANE DOE,”

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 8/17/2020

7:20-CV-5154 (NSR)

ORDER OF SERVICE

NELSON S. ROMÁN, United States District Judge:

Plaintiff, appearing *pro se*, brings this action under 42 U.S.C. § 1983 seeking damages and injunctive relief. She sues (1) Michael Capra, the Superintendent of Sing Sing Correctional Facility, (2) Lieutenant Williams, also assigned to Sing Sing, (3) Investigator Isaac of the New York State Department of Corrections and Community Supervision’s (“DOCCS”) Office of Special Investigations, (4) “John Doe,” an unidentified high-ranking DOCCS official, and (5) “Jane Doe,” an unidentified Sing Sing official. By order dated July 30, 2020, the Court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”).

The Court directs service on Defendants Capra, Williams, and Isaac. The Court also directs the Attorney General of the State of New York to provide Plaintiff and the Court with the identities and service addresses of the unidentified defendants.

DISCUSSION

A. Service on Defendants Capra, Williams, and Isaac

As Plaintiff has been granted permission to proceed IFP, she is entitled to rely on the Court and the U.S. Marshals Service to effect service. *See Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the Court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons and the complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint on Defendants Capra, Williams, and Isaac until the Court reviewed the complaint and ordered that summonses be issued for those defendants. The Court therefore extends the time to serve those defendants until 90 days after the date that summonses are issued for those defendants. If the complaint is not served on Defendants Capra, Williams, and Isaac within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (summary order) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m.”).

To allow Plaintiff to effect service on Defendants Capra, Williams, and Isaac through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of those defendants. The Clerk of Court is further instructed to issue summonses for Defendants Capra, Williams, and Isaac, and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect

service on those defendants. Plaintiff must notify the Court in writing if her address changes, and the Court may dismiss this action if Plaintiff fails to do so.

B. Unidentified defendants

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying an unidentified defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit DOCCS to identify the unidentified “John Doe” and “Jane Doe” defendants. Those defendants include (1) the DOCCS official who affirmed, on administrative appeal, Defendant Capra’s initial 2017 decision to indefinitely suspend Plaintiff’s visitation privileges with regard to Plaintiff’s incarcerated brother, Hotson Neree, and (2) a female DOCCS official assigned to the Sing Sing Correctional Facility on June 22, 2017, who confined and searched Plaintiff on that date when Plaintiff attempted to visit her brother, Hotson Neree, at that facility.

It is therefore ordered that the Attorney General of the State of New York, who is the attorney for and agent of DOCCS, must ascertain the identities (including badge numbers, if necessary) of each unidentified “John Doe” or “Jane Doe” defendant whom Plaintiff seeks to sue here and the address where each of those defendants may be served. The Attorney General must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint in which she names the newly identified defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen it and, if necessary, issue an order directing the Clerk of Court to complete USM-285 forms with the addresses for the newly identified defendants and deliver all documents necessary to effect service on those defendants to the U.S. Marshals Service.

CONCLUSION

The Court directs the Clerk of Court to mail a copy of this order to Plaintiff, together with an information package.

The Court also directs the Clerk of Court to (1) issue summonses for Defendants Capra, Williams, and Isaac, (2) complete USM-285 forms with the service addresses for those defendants, (3) and deliver all documents necessary to effect service on those defendants to the U.S. Marshals Service.

The Court further directs the Clerk of Court to mail a copy of this order and the complaint to the Attorney General of the State of New York at 28 Liberty Street, New York, New York 10005.

An amended complaint form is attached to this order.¹

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: August 17, 2020
White Plains, New York



NELSON S. ROMÁN
United States District Judge

¹ In light of the current global health crisis, parties proceeding *pro se* are encouraged to submit all filings by email to Temporary_Pro_Se_Filing@nysd.uscourts.gov. *Pro se* parties also are encouraged to consent to receive all Court documents electronically. A [consent to electronic service form](#) is available on the Court's website. *Pro se* parties who are unable to use email may submit documents by regular mail or in person at the drop box located at the U.S. Courthouses in Manhattan ([500 Pearl Street](#)) and White Plains ([300 Quarropas Street](#)). For more information, including instructions on this new email service for *pro se* parties, please visit the Court's website at nysd.uscourts.gov.

DEFENDANTS AND SERVICE ADDRESSES

1. Michael Capra, Superintendent
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562-5442
2. Lieutenant Williams
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562-5442
3. Inspector Isaac
New York State Department of Corrections and Community Supervision
Office of Special Investigations
Harriman State Office Campus
1220 Washington Avenue
Albany, New York 12226-2050

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV
(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question**
- Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of _____
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of _____.

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of _____
the State of _____
and has its principal place of business in the State of _____
or is incorporated under the laws of (foreign state) _____
and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

First Name	Middle Initial	Last Name
------------	----------------	-----------

Street Address

County, City	State	Zip Code
--------------	-------	----------

Telephone Number	Email Address (if available)
------------------	------------------------------

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	
<hr/>		
Current Job Title (or other identifying information)		
<hr/>		
Current Work Address (or other address where defendant may be served)		
<hr/>		
County, City	State	Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence:

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.